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Moving Unit Video Television (t/a Muvi Tv Limited) v. Francis Mwiinga Maingaila SCZ Selected Judgment No. 18 of 2019

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Moving Unit Video Television (t/a Muvi Tv Limited) v. Francis Mwiinga Maingaila SCZ
Selected Judgment No. 18 of 2019
Chanda Chungu¹

Facts

This case dealt with an employee of Muvi TV Limited who was accused of defiling an under-age girl whom he had had offered accommodation to. He was videoed being arrested by a police officer and the news read as follows “Journalist defiled a 13-year old girl”. This news story was repeated on several subsequent news broadcasts by Muvi TV.

This story was published before any conviction was made in criminal proceedings. A medical report revealed that the girl had not been defiled and this was available before the story was released. However, despite the medical report being available, before the news, Muvi TV chose not to disclose this the result He was subsequently acquitted but pursued a claim for defamation.

Holding

The Supreme Court confirmed that the basic test that is employed in establishing whether a statement is defamatory or not is that of examining how an ordinary, right-thinking person of the society generally would respond to the statement, in this case, an ordinary reasonable TV viewer in Zambia. Based on the evidence, the Supreme Court agreed that the publication as understood by the ordinary right-thinking TV viewer and listener were defamatory of the employee, on that they cast aspersions of his character, lowered him in the estimation of ordinary right-thinking persons in society generally, particularly given that he had not been convicted, yet or at all but created the impression that he had been or the police had cogent evidence against him.

The defence of truth or justification which negates a finding of defamation was rejected because Muvi TV knew the truth as revealed by the medical report but still run an untrue story that defamed their employee’s character. The Supreme Court, in a judgment delivered by Malila JS (as he was then) guided that the fact that Muvi TV failed to get the employee an opportunity to give his side of the story or reveal the results of the medical examination pointed adversely to their motive to act malicious towards their employee. This coupled with the filming of the video was targeted towards embarrassing him. On this basis, Muvi TV could not claim the defence of truth or justification.

Another defence of public interest is also available when the following are considered namely:- the gravity of the allegation; the essence of the information and the degree to which it concerns the public; the source of the information; the steps taken to verify the information; the urgency of the matter, bearing in mind that news is often a short lived commodity; whether a comment was sought from the person allegedly defamed; whether the article contained the gist of the plaintiff’s side of the story; the tone of the article and the circumstances of the publication, including the timing. In the circumstances, this defence was equally not available especially given that he was not given an opportunity to be heard before the publication.

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Significance

Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him. This tort therefore deals with injury to one's reputation – a priceless commodity which ought to be protected by the law whilst balancing that interest with the defendants' constitutional right to freedom of expression.

The Supreme Court's decision in this matter is crucial because it consolidates and outlines the requirements for defamation under *Zambian law*. According to the Supreme Court, for defamation to succeed the following elements must be satisfied which are:

- the statement must be defamatory;
- that the publication of the statement has caused or is likely to cause serious harm to the reputation of the claimant;
- the statement must refer to the claimant, viz, identify him/her;
- the statement must be published, that is, communicated to at least one person other than the claimant.

For the avoidance of any doubt, the Supreme Court clarified that the essence of defamation is that a person's reputation is seriously damaged by the statement - be calculated to injure the reputation of another, by exposing them to hatred, contempt or ridicule'. This narrow definition clearly does not cover all situations. The owner of a business can suffer loss if he is described as dishonest or unreliable.

The decision of the Supreme Court is also important because it gave an overview of the defences to defamation under *Zambian law*.

The Supreme Court held that for this defence of truth or justification to hold, the whole truth should be considered when the broadcast is made. Defamation does not arise if what is published is the truth. It is for the defendant to prove the truth of the statement. In this matter, the Supreme Court suggested that where the truth is available before publication and a publisher had a chance to give a person the chance to be heard but chose not to consider it or interview the person, the defence of justification is unlikely to succeed as the publication will be tainted with malice and bad faith.

The Supreme Court equally guided on the defence of public interest. Prior to this judgment, the term 'public interest' when used in a legal context is notoriously difficult to define or explain. Does it mean in essence something which it may benefit society generally to be aware of or does it simply mean something in which the public generally are interested? If it is the latter, then for those in the public eye, whether politicians, religious leaders, celebrities etc. – the list could be endless – every aspect of their public and private life can be the subject of comment.

Section 7 of the Defamation Act provides that in an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expressions of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

The Supreme Court provided guidance on the defence of public interest, two elements should be established, namely that: the article as a whole must be in public interest; and (ii) there must be responsible journalism. The court endorsed the principles from the House of Lords decision in *Reynolds v. Times Newspaper* where a non-exhaustive list of factors was listed with respect to the issue of whether the standard required to meet the test of responsible journalism had or had not been satisfied in a particular case, namely:

- the gravity of the allegation;
- the essence of the information and the degree to which it concerns the public;
- the source of the information;
- the steps taken to verify the information;
- the urgency of the matter, bearing in mind that news is often a short lived commodity;
- whether a comment was sought from the person allegedly defamed;
- whether the article contained the gist of the plaintiffs side of the story; the tone of the article and the circumstances of the publication, including the timing.

According to the Supreme Court, any publication that seeks to rely on the public interest defence must consider the factors above. These factors are not exhaustive and other relevant circumstances and facts peculiar to each case should be considered.

In the circumstances, the Supreme Court was clear that the defence of public interest, taken in isolation cannot justify the broadcast of the video and information of defamation where the information is one sided and no steps were taken to verify the information or hear the other side. Further, the court guided that where material information is omitted, either negligently or intentionally, the defence of public interest will be unsustainable.

Conclusion

In sum, where the claimant is available to offer his side of the story but the publisher neglects to exercise this option, the defence of truth or public interest will not operate effectively as defences to a claim for defamation. Specifically for the defence of justification, where there is evidence of bad faith, ulterior motives and malice, the defence shall not succeed.